

Message Text

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SUBJECT: ARRANGEMENT FOR CONTINUING OPIC PROGRAMS IN VENEZUELA
FOR OPIC

REF: A. STATE 57049 B. CARACAS 2753

SUMMARY. FOR REASONS DISCUSSED BELOW, EMBASSY DOES
NOT BELIEVE DRAFT NOTE, REF A, WOULD BE ACCEPTABLE TO
GOVERNMENT OF VENEZUELA NOR WOULD IT ADEQUATELY COVER
UNITED STATES INTERESTS. NEVERTHELESS, THE EMBASSY
IS PREPARED TO DISCUSS OPIC PROGRAM WITH APPROPRIATE
VENEZUELAN OFFICIAL WITH A VIEW TOWARD ACHIEVING
VIALE MODUS OPERANDUM.

END SUMMARY

1. PER REF B, EMBOFFS DISCUSSED OPIC PROGRAM WITH
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CARLOS GUILLERMO CORDIDO VALERY, DIRECTOR OF INDUSTRIES, MINISTRY OF DEVELOPMENT, WHICH OFFICE IS IN CHARGE OF COORDINATING GOVERNMENT APPROVAL OPIC INVESTMENT GUARANTIES. CORDIDO MADE CLEAR HIS OFFICE'S VIEWS ON GUARANTEES FOR FOREIGN INVESTMENT NON- ESSENTIAL PART OF VENEZUELAN ECONOMIC DEVELOPMENT PROGRAM AND BASICALLY A MATTER OF CONCERN PRIMARILY TO FOREIGN INVESTOR, EXTERNAL TO HIS OFFICE. HE DOWNPLAYED NEED FOR INSURANCE BY FOREIGN INVESTORS AGAINST EXPROPRIATION AND NON- CONVERTIBILITY AND DID NOT SEEM TO RECOGNIZE SUCH INSURANCE ENCOURAGED FOREIGN INVESTMENT BASIC TO THIS COUNTRY'S DEVELOPMENT. HE WAS CLEARLY NOT PREPARED TO LEND SUPPORT TO EFFORT TO ESTABLISH FORMAL MECHANISM FOR SETTLEMENT OF INVESTMENT INSURANCE DISPUTES.

2. WHILE EMBASSY INTENDS TO PURSUE MATTER IN GENERAL WITH OTHER RELEVANT GOVERNMENT OFFICIALS, IT IS NOT TOO EARLY TO INDICATE THAT, GIVE THE REACTION ABOVE OF OFFICE MOST DIRECTLY CONCERNED WITH OPIC PROGRAM. PROSPECTS DO NOT LOOK BRIGHT FOR OBTAINING AGREEMENT FOR DRAFT NOTE REF A.

3. AS REQUESTED REF A, THERE FOLLOWS EMBASSY'S REACTION TO FEASIBILITY OF SUGGESTED NOTE: WHILE EXCHANGE OF NOTES WOULD OBIVATE NEED FOR CONGRESSIONAL RATIFICATION IT IS UNLIKELY THAT IT COULD OCCUR WITHOUT PUBLIC NOTICE. SINCE IT INVOLVES THE VERY SENSITIVE ISSUE OF FOREIGN INVESTMENT, IT IS UNLIKELY GOVERNMENT UNDER BEST OF INTENTIONS WOULD WISH TO CONSIDER IT UNTIL AFTER PRESIDENTIAL ELECTION IN DECEMBER.

4. IN ORDER TO AVOID CONGRESSIONAL RATIFICATION, NOT IS DESIGNED AS AMENDMENT OR PROTOCOL TO " 1962 AGREEMENT." IN FACT WHAT TOOK PLACE IN 1962 WAS MERELY AN EXCHANGE OF NOTES WHICH PROVIDED ONLY FOR 1) CONSULTATION ABOUT INVESTMENT GUARANTIES IF REQUESTED BY EITHER GOVERNMENT, AND 2) VENEZUELAN APPROVAL FOR ANY INVESTMENT GUARANTEED BY THE UNITED STATES. IT MADE NO PROVISIONS RELATING TO INVESTMENT GUARANTY PROCEDURES AND RIGHTS AND THEREFORE SEEMS TO BE A WEAK DOCUMENT ON WHICH TO BASE A PROTOCOL LIMITED OFFICIAL USE

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OR AMENDMENT.

5. PROVISION FOR INTERNATIONAL CONCILIATION UNDER ESTABLISHED PROCEDURES OF INTER- AMERICAN CONCILIATION CONVENTION IS NOT LIKELY TO MOLLIFY VENEZUELAN CONCERN FOR PRINCIPLES OF CALVO DOCTRINE, NOR BE CONSISTENT WITH ARTICLE 51 OF DECISION 24 OF AGREEMENT OF CARTAGENA. ON SURFACE IT APPEARS THAT ASSIGNMENT OR SUBROGATION OF INVESTOR RIGHTS TO OPIC WOULD BE IN VIOLATION OF ARTICLE 51, NOTWITHSTANDING 1962 EXCHANGE OF NOTES . EVEN IF PERMITTED, SUBROGATION OF RIHTS WOULD BESFCOMPLICATED BY FACT THAT, BECAUSE OF ANDEAN PACT, ALL NEW INVESTMENT EVENTUALLY WOULD HAVE MAJORITYNLOCAL, PARTICIPATION.

6 IN THE EVENT OF EXPROPRIATION THE GOVERNMENT IS UN- LIKELY TO SUBMIT TO ARBITRATION EVEN IF CARRIED OUT UNDER THE JURISDICTION OF VENEZUELAN COURTS. OF THREE POSSI- BILITIES FOR SETTLING DISPUTES DISCUSSED REF A, ONLY THAT OF INVESTOR RECOURSE TO VENEZUELA COURTS MAY BE ACCEPTABLE TO GOVERNMENT AND IN CASES OF EXPROPRI- ATION WOULD DEPEND ON GOVERNMENT' S WILLINGNESS TO BE SUED. THUS PROSPECTS ARE NOT FAVORABLE FOR OPIC RECOUPING LOSS IN EVENT CLAIMS MUST BE PAID TO INSURED INVESTOR.

7. EMBASSY WONDERS WHETHER OPIC EXPROPRIATION INSURANCE WOULD BE APPLICABLE IN ANY WAY TO DISINVESTMENT REQUIRED UNDER DECISION 24 IN VIEW OF FACT THAT FOREIGN INVESTOR MAY NOT BE ABLE TO OBTAIN WHAT HE CONSIDERS ADEQUATE COMPENSATION AT TIME HE FORCED TO PUT SHARES ON MARKET. ALSO COULD LIMITATION OF PROFIT REMITTANCE F 14 PCT OF INVESTMENT BE CONSTRUED AS APPLICABLE TO NON- CONVERTIBILITY COVERAGE? IF NEITHER OF THESE CON- TINGENCIES IS COVERED BY OPIC CONTRACTS, EMBASSY SUGGESTS THIS FACT BE EXPLICITLY STATED IN CONTRACTS ISSUED FOR INSURANCE IN ANDEAN PACT COUNTRIES.

8. IN LIGHT OF ABOVE, EMBASSY CONCLUDES THAT VENE- ZUELAN MEMBERSHIP IN ANDEAN PACT DOES NOT NECES- SARILY INCREASE RISK OF EXPROPRIATION OR INCONVERTI- BILITY. IN FACT IN CASE OF EXPROPRIATION RISK MAY BE LESS SINCE ALL NEW INVESTMENTS INVOLVE AN INCREASING PROPORTION OF LOCAL PARTICIPATION. HOW- LIMITED OFFICIAL USE

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EVER, IF CONTINGENCIES FOR WHICH INSURANCE IS ISSUED DO OCCUR, PROSPECTS ARE NOT BRIGHT FOR OPIC OBTAIN- ING RECOURSE FROM GOVERNMENT WHROUGH AN ESTABLISHED PROCEDURE FOR SETTLEMENT OF DISPUTES. MCCLINTOCK UNQUOTE ROGERS

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